

Minutes of the Special and Regular Meeting Of May 10, 2005
Twin Pines Senior and Community Center, Twenty Twin Pines Lane

SPECIAL MEETINGS

CLOSED SESSION - 6:30 P.M.

- A. Conference with Labor Negotiator, Dan Rich, pursuant to Government Code Section No. 54957.6: 1) MMCEA, 2) AFSCME.
- B. Conference with Legal Counsel – Anticipated Litigation; Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(b)--one case

Attended by Councilmembers Feierbach, Bauer, Mathewson, Metropulos, Warden, Interim City Manager Rich, Interim City Attorney Zafferano, Finance Director Fil (Item A only), Human Resources Director Dolan (Item A only), Interim City Manager Candidate Jack Crist, and Larry Abelin (Negotiator, Item A only). City Clerk Cook was excused from attending.

ADJOURNMENT at this time, being 7:30 P.M.

Terri Cook
Belmont City Clerk

Meeting not tape recorded or videotaped.

REGULAR MEETING

CALL TO ORDER 7:40 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Feierbach, Mathewson, Metropulos, Bauer, Warden

COUNCILMEMBERS ABSENT: None

Staff Present: Interim City Manager Rich, Interim City Attorney Zafferano, Public Works Director Davis, Community Development Director Ewing, City Clerk Cook.

PLEDGE OF ALLEGIANCE

Led by City Clerk Cook.

REPORT FROM CLOSED SESSION

Mayor Warden reported that direction was given but no action taken on the Closed Sessions held earlier in the evening and on April 26, 2005.

SPECIAL PRESENTATIONS

Recognition of Yasmine Kury as Recipient of the First Annual City of Belmont NDNU Student Community Service and Leadership Award

Mayor Warden outlined the accomplishments of Yasmine Kury, Notre Dame de Namur (NDNU) Student Body President. He noted that she was the first recipient of the Belmont/NDNU Leadership Award, which was presented at graduation over the previous weekend.

Yasmine Kury expressed her gratitude for the Proclamation, and said she would treasure the honor. She noted that it had been a great experience working at the Center for Independence of the Disabled, and she also had the opportunity to get to know how local government works.

Presentation by Ralston-Namur Band Students on its recent tour to Namur, Belgium

Alan Sarver, Ralston Band tour leader, reviewed the activities that led up to the school's recent music tour to Belmont's sister city of Namur Belgium. He thanked the community for its support, and noted that fundraising had defrayed 25 percent of the cost of the trip. He commented that students from Namur looked forward to their upcoming trip to Belmont in the Spring of 2006. He noted that Ralston students were well prepared, enthusiastic, and were good ambassadors for Belmont.

Three Ralston students (Emily Yousef, Hannah Sarver, Nathan Lee) shared journal entries written by Ralston students while on the trip.

Proclamation Honoring Outstanding Service by Dan Rich

Mayor Warden presented a Proclamation to outgoing Interim City Manager Dan Rich. He also presented gift certificates to local restaurants from the City Council.

Interim City Manager Rich stated that this was an unexpected surprise. He thanked the Council, staff, and community for its support during his tenure with the City of Belmont.

PUBLIC COMMENTS AND ANNOUNCEMENTS

Joline Bettendorf, Valley View Road, stated that she was putting together an education program to teach residents how to deal with mountain lion sightings. She noted that she was working with Belmont Police staff and the Department of Fish and Game. She will be asking for future support from the City Council for this endeavor.

COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS

Councilmember Feierbach announced that Notre Dame de Namur University would be hosting the Viardo International Piano Competition from May 28-June 5, 2005.

Councilmember Mathewson announced that May 19 is Bike-to-Work Day. He also announced that the second meeting of the Permit Efficiency Task Force would be held on May 11, 2005.

Councilmember Metropulos stated that the California Teachers Association would be holding a rally on May 11 at the corner of El Camino Real and Ralston Avenue to express its displeasure of Governor Schwarzenegger's Budget.

Councilmember Bauer stated that the League of California Cities' visit to Sacramento legislators would be May 11, 2005.

Mayor Warden announced that May 9-15, 2005 was Wildfire Awareness Week to bring attention to the upcoming fire season. He also announced that the Farmer's Market was now open every Sunday through November 20, 2005.

CONSENT CALENDAR

Approval of Minutes of Regular Meeting of April 12, 2005, Special Meeting of April 19, 2005, and Special Meeting of April 21, 2005.

Approval of Resolution 9661 and Introduction of Ordinance Approving an Amendment to the Contract Between the City of Belmont and the Board of Administration of the California Public Employees' Retirement System to Provide Section 21362.2 (3% @ 50 Full Formula) and Section 21574 (Fourth Level 1959 Survivor Benefit) for Local Safety Members

Approval of Resolution 9662 Appointing Interim City Manager (Jack Crist).

Approval of Ordinance 1005 Approving Amendments to Chapter 14, Belmont Municipal Code, Motor Vehicles and Traffic, Article III, Truck Route and Weight Limitations.

ACTION: On a motion by Councilmember Mathewson, seconded by Councilmember Bauer, the Consent Agenda was unanimously approved by a show of hands.

HEARINGS

Public Hearing to consider an Appeal filed on October 20, 2003, by Mr. Steven Eckert, regarding Planning Commission Action taken on October 8, 2003, denying a Variance to allow a proposed four-foot deck extension into the required 15-foot rear yard for the single family dwelling located at 1814 Oak Knoll Drive. (Appl. No. 01-0356).

Councilmember Mathewson declared a conflict of interest on this matter since he lives within 500 feet of the subject property. He stepped off the dais and out of the room.

Principal Planner de Melo reviewed the public hearing history of this application before both the Planning Commission and the City Council. He outlined the property setback requirements. He advised that the Planning Commission was unable to make four of the five findings in order to grant the variance sought by the applicant for his proposed deck extension. In order for the City Council to overturn the Commission's decision, it needs to conclude that the evidence does not support this decision. He noted that staff's recommendation was to uphold the decision of the Planning Commission.

Mayor Warden opened the Public Hearing. No one came forward to speak.

ACTION: On a motion by Councilmember Bauer, seconded by Councilmember Metropulos, the Public Hearing was unanimously closed by a show of hands.

Mayor Warden noted that the Council Protocols had recently been modified to allow an applicant ten minutes for their presentation, but that he had granted the applicant 20 minutes.

Steven Eckert, Oak Knoll Drive, stated that this was the sixth hearing for his deck project, and that he had submitted hundreds of pages of evidence for his appeal. He stated that the City would not provide time for him to present his information, only to summarize. He noted that he was willing to swap outdoor space in order to acquire the additional space on his deck by replacing his patio with shrubs. He stated that his variance request is based on precedence, and that the City should apply the same standards to his application.

Mr. Eckert outlined the City's denials of his variance requests, and commented that the reasons for denial were based on pretense. He outlined the confidential complaint that led to the granting of a variance for his neighbor's illegal deck. He compared his deck to that of surrounding neighbors, and commented that he was asking for the same as his neighbors, not more. He added that other lots are smaller than his, and he reviewed prescriptive and utility easements across some properties adjacent to his.

Mr. Eckert stated that the Planning Commission is biased and has abused its power. He stated that this issue was about fairness and equality, and the facts regarding his deck were the same as his neighbors. He noted that his neighbors support his application, and he had gathered 30 signatures to support his request. He also noted that the neighbor at 1915 Hillman, alleged by the Commission to be harmed by his deck extension, had sent a letter in support, which was inconsistent with the Commission's findings. He added that the downslope neighbors stated they would enjoy more privacy with the deck extension.

Mr. Eckert stated that he did not understand the rules when he did not support his neighbor's deck variance, but does so now, which is why he applied for a variance of his own. He stated that the same findings for the neighbors' approved variance could be applied to his variance application. He reviewed photos of the neighbor's access to their back yard, which the Planning Commission stated was not available to them. He also noted that since the approval of the original variance for the deck extension, the next-door-neighbor has received an administrative approval for additional floor area on the third level of their home.

Mr. Eckert reviewed variance applications in his neighborhood, and noted that 90 percent had been granted. He noted that the Planning Commission's reasons for denial of his application were based on convenience, not hardship. He stated that his patio is not usable since it is inconvenient, and is covered by bushes and trees between retaining walls.

Mr. Eckert reviewed inconsistencies in findings made by the Planning Commission for his home, and other homes in the neighborhood. He noted that he built retaining walls for stability, not to increase the size of his property. He stated that there was no justification for denial, and he did not receive a fair hearing. He noted that his next-door-neighbor now has more living space than he does, and his outdoor deck is the smallest in the neighborhood.

Mr. Eckert stated that no sight-line study was made, as requested, and he also commented on auditory privacy issues. He stated that all five findings could be made, and recommended approving the variance with conditions, including his previous offer to reduce his patio space.

Mayor Warden stated that, per the Council Protocols, Mr. Eckert would be granted five minutes of rebuttal testimony.

Mr. Eckert stated that the staff report is flawed since it does not give the City Council adequate advice for an informed vote. He addressed what he purported to be incorrect calculations made by staff, and stated that there are no interior stairs to connect to his patio, as is alleged in the staff report. He noted the stair landing is the minimum allowed, and is not large. He noted that the deck piers are covered by bushes. He stated that the City's building official required walkways to

be built on what the official stated was unstable land, but is not unstable, and his neighbors have now been allowed to build on this allegedly unstable land. He stated that staff falsified the record on this issue. He commented that his neighbor has been allowed to increase the usable space of their home without the need for a variance, which has resulted in a larger home than his.

In response to Councilmember questions, Community Development Director Ewing clarified that no two properties are exactly alike, and that the Planning Commission analyzed material differences on this application. He also clarified that only Findings B, C and D make comparisons to other properties in the same zoning district, not just to neighboring properties.

In response to Councilmember Bauer, Mr. Eckert clarified that both decks existed when he purchased the home. He also acknowledged that he was aware the previous next-door-neighbor's deck exceeded the permitted size, and that the subsequent owner, the Sirenko's, learned this when advised by a building inspector.

Councilmember Feierbach stated that variances should only be granted for hardships like as bringing a home into conformity with the zoning standards, such as to add a two-car garage when only a one-car garage exists. She stated that deficient parking constitutes a hardship, but a deck does not.

Interim City Attorney Zafferano stated that it is difficult to discuss hypothetical situations, and Council needs to make a determination on the application before it. He clarified that hardship is Finding A. He noted that case law exists which state that variances are determined on a case-by-case basis, and there is a requirement that all five findings must be made in order to grant the variance.

Councilmember Feierbach stated that she voted no on the original variance. She stated that a variance is a special need, and she does not support variances except to make properties compatible with the zoning requirements.

Councilmember Bauer stated that he does not appreciate the accusations made of staff by the applicant. Mr. Eckert responded that he has photos supporting his allegations, which he stated were not used by staff when it wrote its report.

Councilmember Metropulos stated that hardship is a compelling argument relative to health and safety issues. He cannot support a variance for recreational use, since he cannot make the finding of hardship.

Mayor Warden stated that former City Attorney Savaree stated at Mr. Eckert's 2002 City Council hearing that variances are determined on a case-by-case basis, and should be used sparingly. She also noted that all five findings must be made in order to grant the variance. He stated that he cannot make finding A (physical hardship) or Finding E (detrimental to health and safety). He noted that the former owner of 1915 Hillman previously testified in opposition to Mr. Eckert's application for a variance, citing privacy issues. He noted this is the reason for rear yard setbacks, and a variance is in place forever, regardless of who owns the property.

In response to Councilmember Bauer's question regarding Mr. Eckert's offer to negotiate the terms, Interim City Attorney Zafferano responded that the purpose of this Hearing is not to negotiate. He stated that the Court ordered a review of new evidence, and that the status of litigation should not affect Council's decision on this appeal hearing. That decision should be based solely on which findings Council can or cannot make.

ACTION: On a motion by Councilmember Feierbach, seconded by Mayor Warden, Resolution 9663 Upholding the Planning Commission's decision to deny Appeal filed on October 20, 2003, by Mr. Steven Eckert, regarding Planning Commission Action taken on October 8, 2003, denying a Variance to allow a proposed four-foot deck extension into the required 15-foot rear yard for the single family dwelling located at 1814 Oak Knoll Drive, based on the fact that Findings A, C, D and E could not be made, was unanimously approved by a show of hands (4-0, Mathewson recused).

Mayor Warden clarified he was able to make Finding B (*exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district*).

Councilmember Bauer clarified that he voted yes for the motion, but was able to make Finding C (*strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district*.)

RECESS: 9:55 P.M.
RECONVENE: 10:05 P.M.

Councilmember Mathewson returned to the dais.

OLD BUSINESS

Discussion and Direction Regarding Donation of an Electronic Reader Board from the Belmont Rotary Club

Parks and Recreation Director Mittelstadt reported that the Belmont Rotary Club desires to donate an electronic reader board to the City of Belmont. The City Council previously directed that the Planning Commission and the Parks and Recreation Commission review and recommend a potential placement for the sign. The Parks and Recreation Commission recommended placement at Ralston Avenue at Hiller, or El Camino Real and Ralston Avenue, but the Rotary Club expressed desire for placement at Twin Pines Park. He reviewed the reasons for the recommendation by the Commission.

Parks and Recreation Director Mittelstadt stated that following the Rotary Club's expressed desire for the Twin Pines Park placement, the Commission noted that the donated sign could replace the existing sign with modifications for the same dimensions as the existing. He noted that if Council approved this placement, Planning Commission approval was needed for design review and a variance for off-site signage, since it would not be located within the public right-of-way. He also noted that the associated Planning Commission Hearing fees would need to be addressed as well.

In response to Council questions, Community Development Director Ewing clarified that two standards were not met with the Park placement: 1) animated signs are not permitted in the Agricultural zoning of the Park, and 2) the Rotary logo constitutes off-site advertising. He noted that there is no distinction made in the Zoning Ordinance whether the advertising is for profit or not-for-profit, and he clarified that conformity with the Zoning Ordinance would not be applicable if the sign were located in the right-of-way.

Councilmember Bauer stated that variance standards should be changed to allow this sign. A nonprofit was willing to make a donation, which he supports. He noted that the Rotary Club has contributed in many ways to the community.

Rick Frautschi, Folger Drive, stated that he is opposed to gifts with strings attached. He noted that there is a cost to the City for processing this application, and the City has budget problems. The Rotary Club is imposing conditions for the location of the sign. He stated this is a troublesome issue for the Planning Commission. He noted the Council recently dealt with the issue of in-pavement flashers on Ralston Avenue. He expressed concerns about the types of messages and photos to be displayed, and wondered if it might be distracting, and could be considered visual pollution. He recommended declining the reader board and accepting another more desirable item.

Dave Long, South Road, stated this is a noble gesture on the part of the Rotary Club. He noted that the Central Neighborhood Association uses the reader board for its meetings, and that it is effective, but not the only effective communication tool. Precedence and cost is a consideration. He noted the proposed sign is modern, unlike the existing board. He stated that Ralston Avenue is a quaint corridor, and the proposed reader board would change that. He opposes the proposal.

Judy King, Fifth Avenue, recommended that the Council develop a wish list of gift items, and institute a policy that requires that donated items be chosen from that list.

Councilmember Metropulos stated that if the sign looked like the photo, he may be in favor, but he is concerned about illumination and its effect on nighttime aesthetics. He commented that the offsite advertising is not an issue as it is simply a logo for a service club. He noted that the new sign might be more effective if it is used more, but the fees are a compelling issue.

Councilmember Feierbach stated that she cannot make the findings for the variance, and does not support a variance unless it is a necessity. She does not want to turn down a gift, and would like to develop a way for groups to be able to donate items. She does not want any additional lighting on Ralston Avenue.

Councilmember Mathewson stated that he supports Rotary's desire to give a gift to the City, but he is concerned regarding the variance. He likes the rustic look of the existing sign. He noted that Council turned down a previous plan for an illuminated sign in this location. He stated that the application cost is a budget issue, and suggested the Rotary Club consider something else.

MEETING EXTENSION: At this time, being 10:30 P.M., on a motion by Councilmember Metropulos, seconded by Councilmember Bauer, the meeting was unanimously extended 30 minutes by a show of hands.

Interim City Attorney Zafferano clarified that Councilmember Bauer would not need to recuse himself from this issue even though he is a member of the Rotary Club, since he does not have a financial interest.

Councilmember Bauer stated that this reader board would benefit the community. It is not a visual impediment, and he would support the use of City funds for the application fees.

Mayor Warden expressed his support of the Rotary Club's donation, but cannot support its proposed location. He noted that the City did not already intend to replace the existing reader board. He has an issue with off-site advertising, and noted this could set a bad precedence on City property. He also expressed concerns regarding the fees.

ACTION: On a motion by Councilmember Feierbach, seconded by Councilmember Mathewson, to decline the acceptance of the reader board as proposed by the Belmont Rotary Club, was approved by a show of hands (4-1, Bauer no).

Interim City Manager Rich stated that the City is willing to explore other options for the Rotary Club's donation.

Discussion and Direction Regarding Expanded Use of Channel 27

Informational Services Manager Harnish stated that this was a followup to Council's direction to explore options for the use of Cable Channel 27, which the City of Belmont has exclusive use. She noted that although a wide range of options are available, current budget and staff constraints limit the choices. She stated that the most viable option is a static-information bulletin board, which could be implemented with minimal cost and staff time, and that re-broadcasting Council meetings would be an additional cost. She clarified that no funding was available for streaming video. She stated that the Technology Plan would need to be reprioritized if other options were desired. She clarified that the static bulletin board would not be implemented until the City Manager's office was fully staffed.

Councilmember Feierbach stated that she would support implementation of the bulletin board option.

ACTION: On a motion by Councilmember Metropulos, seconded by Councilmember Feierbach, and unanimously approved by a show of hands to fund a static bulletin board in FY 06 for use on Channel 27, to be implemented when the City Manager's office is fully staffed, and to consider web streaming after the other Technology Plan priorities are funded.

MATTERS OF COUNCIL INTEREST/CLARIFICATION

Discussion and Direction Regarding the use of a Pedestrian Flag system at certain crosswalks on Ralston Avenue (Warden).

Mayor Warden stated this item would be postponed to the next Council meeting.

ADJOURNMENT at this time, being 10:50 P.M.

Terri Cook
Belmont City Clerk

Meeting Tape Recorded and Videotaped
Tape No. 609
Minutes approved 6/14/2005